



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	02/16/05	Bill No:	SB 322
Tax:	Sales and Use	Author:	Migden
Position:	Support Board-sponsored		

BILL SUMMARY

This Board-sponsored measure would, as part of the application process with the Alcohol Beverage Control Board (ABC) to obtain a license to sell alcohol beverages, require an applicant to include a copy of his or her valid seller's permit issued by the Board of Equalization (BOE).

ANALYSIS

Current Law

Under California's Sales and Use Tax Law, every person desiring to engage in or conduct business as a seller of tangible personal property within this state is required to apply to the BOE for a seller's permit for each place of business. In general, a seller's permit must be obtained if a person intends to sell or lease tangible personal property that would ordinarily be subject to sales tax if sold at retail. The requirement to obtain a seller's permit applies to individuals, partnerships, corporations, organizations, limited liability partnerships and limited liability companies. Both wholesalers and retailers are required to apply for a seller's permit.

Under the State Constitution, ABC is granted the exclusive authority to administer the provisions of the Alcoholic Beverage Control Act in accordance with laws enacted by the Legislature. This involves licensing individuals and businesses associated with the manufacture, importation, and sale of alcoholic beverages in this state and the collection of license fees or occupation taxes for this purpose. Under this Act, a license is required for the privilege of selling all types of alcoholic beverages, namely, beer, wine, and distilled spirits. However, this Act does not require that a seller's permit be obtained as a prerequisite to obtaining a license.

Proposed Law

This bill would amend Section 23952 of the Business and Professions Code to specify that the application to obtain a license to sell alcohol beverages shall include a copy of the applicant's valid seller's permit issued by the BOE.

The bill would become operative January 1, 2006.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position

In General

In general, persons desiring to obtain a seller's permit with the BOE may register in person or by mail. Those who register for a seller's permit in person at one of our field offices can usually receive their permit on the same day.

For those that apply by mail, a registration packet is mailed to the applicant within 24 hours. Generally, applicants receive their seller's permit within two weeks after the BOE received the completed application.

Taxpayers occasionally apply for a seller's permit far in advance of the start of business. Sometimes, a seller must often provide a vendor with a resale certificate months prior to the actual date sales begin and needs the seller's permit to do so. In these and similar situations, BOE policy is to issue a permit up to nine months in advance of the selling date. The BOE makes a notation in its records and does not mail sales and use tax returns to the taxpayer until the anticipated starting date of the selling activity. Audits and other enforcement activity do not commence until after the business is actively engaged in selling and filing returns.

Conversely, the time period for obtaining an alcohol beverage license can take several months. It is not feasible for the ABC to accept applications by mail since considerable detailed personal information is required, including fingerprints, from all individual applicants, managers, and managing officers of applicant corporations.

While current law does not specifically require an applicant to possess a seller's permit prior to applying for a alcohol beverage license, both the BOE and the ABC alert applicants of the requirements under the law. The BOE's seller's permit application has a space to designate the applicant's alcohol beverage license number. If an alcohol beverage license is applied for, but not yet issued, the BOE will nevertheless issue a seller's permit and make a notation that the alcohol beverage license is pending. BOE staff instructs the applicant to provide the alcohol beverage license information when it is obtained. Applicants generally do respond back with the number.

The ABC, as part of its application requirements, currently provides information on its web site alerting potential applicants of the seller's permit requirements and provides a link to the BOE's web site for further information.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the Board to prevent the issuance of an alcohol beverage license to a person who does not have a valid seller's permit.
2. **This requirement is consistent with that for firearms dealers and car dealers.** Similar requirements are currently imposed upon new and used automobile dealers when applying for dealers' licenses with the Department of Motor Vehicles and firearms dealers when obtaining a license from the Department of Justice to sell, lease, or transfer firearms.

3. **The bill would facilitate sellers' compliance with the Sales and Use Tax Law.** The requirement that an applicant include a copy his or her valid seller's permit would assure that the applicant has contacted the BOE and has obtained a valid seller's permit with the accompanying information on the rights and responsibilities as a seller under the Sales and Use Tax Law.
4. **These provisions would not significantly delay or impede the alcohol beverage license application process.** As noted above, a seller's permit may be issued on the same day for which it was applied. Enactment of this measure would not cause any significant delays in the alcohol beverage liquor license application process.

COST ESTIMATE

Enactment of this bill would not materially impact the BOE's workload.

REVENUE ESTIMATE

Enactment of this bill could increase compliance with the Sales and Use Tax Law, thereby increasing revenues. However, the magnitude of this increase is unknown.

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